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IN THE

# SUPREME COURT OF THE UNITED STATES.

No. ...780

JAMES LAWRENCE RELEFORD,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

## PETITION FOR A WRIT OF CERTIORARI

**To the United States Court of Appeals for the Sixth Circuit.**

JOHN F. DUGGER,
209 East Main Street,
Morristown, Tennessee,
Attorney for Petitioner.

ST. LOUIS LAW PRINTING CO., INC., 415 N. Eighth Street. CEntral 1-4477.

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## PETITION FOR A WRIT OF CERTIORARI

**To the United States Court of Appeals for the Sixth Circuit.**

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I.

James Lawrence Releford prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit which was entered in the above case on November 2, 1965.

## II.

## OPINION BELOW.

The United States Court of Appeals for the Sixth Circuit rendered and filed its opinion on November 2, 1965, not yet reported, a copy of which is printed as an appendix to this petition.

## III.

## JURISDICTION.

The judgment of the United States Court of Appeals for the Sixth Circuit was entered on November 2, 1965. The jurisdiction of this court is invoked under Title 28, Sec. 1254.1, U. S. C.

## IV.

## QUESTIONS PRESENTED.

No. 1: Did the District Court err in charging the jury on reasonable doubt as follows: "But proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act on in the most important of your own affairs."

No. 2: Did the District Court err in charging the jury as follows: "It is reasonable to infer that a person ordinarily intends the natural and probable consequences of acts which he knowingly does or knowingly omits to do. So, unless the contrary appears to you from the evidence, you may draw the inference that Mr. Releford intended all the consequences which one standing in like circumstances and possessing like knowledge should reasonably have expected to result from any act which he knowingly did or knowingly omitted."

No. 3: The District Court erred in refusing to charge the jury as requested as follows:

"I further charge you that you cannot infer that the defendant knew that the bills were counterfeit, solely from the fact that he passed them, if you find that he did pass them."

V.

This case involves instructions to the jury in a criminal case. Rule 30 of the Federal Rules of Criminal Procedure is as follows:

> "At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the ground of his objection. Opportunity shall be given to make the objection out of the hearing of the jury."

VI.

**STATEMENT.**

Petitioner was indicted along with two others in the first count with conspiracy to violate Title 18, Section 472, U. S. C., in that they would pass counterfeit obligations of the United States, to-wit: $50.00 Atlanta federal reserve

notes. The jury was unable to agree on Count 1 as to petitioner and a mistrial was declared and subsequently this count was dismissed.

Counts 2, 3, and 4 of the indictment, on which petitioner was convicted, charged that he, on July 2, 1962, passed three counterfeit $50.00 Atlanta federal reserve notes to Latimer-Looney Chevrolet Company, Kingsport, Tennessee (Count 2); to Joe's Food Market, Rogersville, Tennessee (Count 3); to Stapleton Super Market, Rogersville, Tennessee (Count 4); the remaining counts contained in the indictment were substantive counts and pertained only to the petitioners co-defendants. Petitioners co-defendants entered pleas of guilty.

It was stipulated by petitioner that his co-defendants passed the counterfeit bills referred to in Overt Acts 3, 4, 6, 7, 11, 13, 14, 15, 16, 17, 18, 19, and 22, subject to being relevant as to this petitioner, but petitioner by stipulating these facts did not admit that he knew that his co-defendants had passed said $50.00 notes.

The proof disclosed as to Count 2 of the indictment that petitioner, on July 2, 1962, went to the Latimer-Looney Chevrolet Company in Kingsport, Tennessee, and paid a repair bill on his Cadillac automobile of approximately $15.00 and that he paid this repair bill with a counterfeit $50.00 Atlanta federal reserve note. Petitioner had been an employee of the Latimer-Looney Chevrolet Company and was known to some of the employees.

In connection with Count 3 of the indictment, Ellen Martin of Joe's Food Market testified that petitioner had been a regular customer of Joe's Food Market for several years. That on July 2, 1962, petitioner and another colored man purchased meat at her store and that petitioner gave her a $50.00 bill. Mrs. Martin turned the $50.00 bill over to her husband and took it to the bank in his

deposit, along with two other $50.00 bills received in the regular course of business that day. After Mrs. Martin discovered she had received a counterfeit bill, she called the petitioner and he told her that he did not know that the bill was counterfeit, that he had received it in a business transaction and said that he would repay her the $50.00.

In connection with Count 4 of the indictment, involving Stapleton's Super Market in Rogersville, Tennessee, Mrs. Mary D. Stapleton testified that about 10:00 A. M., on July 2, 1962, a colored man purchased some produce in her store and paid for it with a $50.00 bill. She refused to identify the petitioner as being the individual who passed the $50.00 bill but did say that "It looks like him." On being questioned by the Court, she testified that she was not willing to say whether it was the petitioner or not.

Harold Duke, secret service agent, testified that petitioner admitted passing three $50.00 notes, one at Latimer-Looney Chevrolet Company; one at Joe's Food Market and one at a store in Rogersville, but that he did not remember the name of this store. That he had obtained the three notes from one, Cecil Price, from Danville, Virginia, as part of a total payment of $200.00 for four cases of whiskey, and that he did not know that they were counterfeit.

Mrs. Viola Spears, aunt of the petitioner, testified that petitioner came to her home in Greeneville, Tennessee, and that subsequently his two co-defendants came to her home and that they left in an automobile which she assumed was petitioners.

The District Court overruled a motion for judgment of acquittal based upon insufficiency of the evidence and the Sixth Circuit Court of Appeals held that there was sufficient evidence to submit the case to the jury.

## VII.

## REASONS FOR GRANTING WRIT.

The decision of the Sixth Circuit Court of Appeals in this case is in direct conflict with decisions of the Fifth Circuit Court of Appeals and the Court of Appeals for the District of Columbia. The Sixth Circuit's decision is in direct conflict with the decision of the Court of Appeals of the District of Columbia in the cases of Scurry v. U. S., 347 F. 2d 468 (CADC 1965) and Jones v. U. S., 338 F. 2d 553, 555 as to Question No. 1 pertaining to the charge on reasonable doubt and in direct conflict with the decision of the Fifth Circuit in Mann v. U. S., 319 F. 2d 404, 407 (1963) pertaining to the instruction on intent.

The petitioner objected to both of these charges by the District Court and it was not necessary for the Sixth Circuit to invoke the plain error rule (Rule 52 (b) Federal Rules of Criminal Procedure). Therefore, the Sixth Circuit held that these erroneous charges were harmless error.

1. The District Court charged the jury on reasonable doubt as follows:

> But proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act on in the most important of your own affairs, but no defendant is ever to be convicted on mere suspicion or speculation or conjecture.

The Sixth Circuit approved this charge by relying on Holland v. U. S., 348 U. S. 121, 99 L. Ed. 150 (1950). The Court of Appeals for the District of Columbia condemned this charge and also relied on Holland v. U. S., supra, in support of its position.

In neither Holland v. U. S., Scurry v. U. S. or Jones v. U. S., supra, did the defendant object to this portion of the Court's charge; therefore, under Rule 30 of the Federal Rules of Criminal Procedure, it would have been necessary for the Court to find plain error as the Trial Court was not given a chance to correct his charge. This court in Holland v. U. S., supra, merely held that a charge using similar language but using the word "might" instead of "would" was not plain error.

The Sixth Circuit Court of Appeals relied upon the last portion of the charge "No defendant is to be convicted on mere suspicion or speculation or conjecture" as correcting the first part. However, the jury was in effect instructed that they could and should convict on a preponderance of the evidence. In making a decision on important business affairs, it necessarily follows that a decision must be made one way or the other, and any reasonable individual required to make a decision one way or the other would act on a mere preponderance of the evidence.

In Wilson v. U. S., 232 U. S. 563, 58 L. Ed. 728, this Court approved a charge on reasonable doubt which contained the following:

> "On the contrary, if it is your frame of mind if you are in the frame of mind where, away from here, you would pause and hesitate before acting, then you have a reasonable doubt."

The charge in this case is the reverse of that given in Wilson v. U. S., except that it leaves out the most important part; that is, the jury must be willing to act without hesitation. According to the charge in this case, if the jury or a juror hesitated, thought it over, prayed over it, and after much meditation finally decided to act, proof beyond a reasonable doubt would be established.

According to the holding in this case, a defendant is required to establish that an erroneous charge is "plain error" in every case and it is useless to comply with Rule 30 of the Federal Rules of Criminal Procedure and object to a portion of the charge.

2. The District Court charged the jury as follows on intent:

> "It is reasonable to infer that a person ordinarily intends the natural and probable consequences of acts which he knowingly does or knowingly omits to do. So, unless the contrary appears to you from the evidence, you may draw the inference that Mr. Releford intended all the consequences which one standing in like circumstances and possessing like knowledge should reasonably have expected to result from any act which he knowingly did or knowingly omitted."

The petitioner's intent and knowledge were the crucial issues in this case and he objected to this portion of the charge. The Fifth Circuit in Mann v. U. S., supra, held that this charge was so plainly erroneous that it required reversal even though no objection was made. The Sixth Circuit merely held that it did not affect any circumstantial right of the defendant.

3. The District Court refused to charge the jury as requested by the defendant as follows:

> "I further charge you that you cannot infer that the defendant knew that the bills were counterfeit, solely from the fact that he passed them, if you find that he did pass them."

Knowledge and intent were the crucial issues in the case and the requested charge was a correct statement of the law. U. S. v. Litberg, C. A. 7 (1949), 175 F. 2d 20; Mar-

son v. U. S., C. A. 6 (1953), 203 F. 2d 904; U. S. v. Berkley, C. A. 6 (1961), 228 F. 2d 713 (Sixth Circuit Opinion in this case, appendix).

The defendant did not take the witness stand in this case. At no place in the charge was the jury told that they could not infer knowledge and intent from the mere act of passing a counterfeit bill. The jury was in effect instructed that "unless the contrary appeared from the evidence," they could draw the conclusion that the defendant knew that the bills were counterfeit if anyone in like circumstances would have known that they were counterfeit. They were further instructed that they could find that he knew they were counterfeit if the proof was such that they would be willing to act on in the most important of their own affairs.

The refusal to give this charge, coupled with the charge given on intent, effectively eliminates intent and knowledge as an ingredient of the offense. Morisette v. U. S., 342 U. S. 246, 72 S. Ct. 240, 96 L. Ed. 288 (1952).

"Intent" and "reasonable doubt" charges are involved in practically all criminal cases. The United States of America is now in its 189th year of independence and it is time that trial courts give a correct charge on these two essential ingredients in all criminal cases.

## VIII.

## CONCLUSION.

In view of the conflicts between the decision of the Court of Appeals for the Sixth Circuit and the decisions of the Court of Appeals for the Fifth Circuit and the District of Columbia, the importance of interpreting Rule 30 of the Federal Rules of Criminal Procedure concerning

objections to an erroneous charge and the necessity that juries in all criminal cases be given a correct charge on intent and reasonable doubt, it is respectfully submitted that this petition for certiorari should be granted.

Respectfully submitted,

.....

JOHN F. DUGGER,
209 East Main Street,
Morristown, Tennessee,
Attorney for Petitioner.

## APPENDIX A.

No. 16078.

United States Court of Appeals
For the Sixth Circuit.

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|---|---|
| United States of America, Plaintiff-Appellee, v. James Lawrence Releford, Defendant-Appellant. | Appeal from the United States District Court for the Eastern District of Tennessee, Northeastern District. |

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Decided November 2, 1965.

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Before Miller and O'Sullivan, Circuit Judges and Mathes, Senior District Judge.*

O'Sullivan, Circuit Judge. This is an appeal from a judgment entered upon a jury verdict finding defendant-appellant, James Lawrence Releford, guilty of passing three counterfeit $50.00 bills (Atlanta Federal Reserve Notes). Appellant was indicted with his brother, Ralph Randy Releford and his cousin, Marion Eugene McClure. Count one of the indictment charged these three persons with conspiracy to violate Section 472, Title 18, U. S. C. A.[1] Counts two, three and four charged substantive

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* Sitting by designation with 6th Circuit.

[1] "Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined not more than $5,000 or imprisoned not more than fifteen years, or both." 18 U. S. C. A., § 472.

offenses under the same statute, specifically that appellant on July 2, 1962, had passed counterfeit $50.00 bills, one at the Latimer Looney Chevrolet Company in Kingsport, Tennessee, one at Joe's Food Market in Rogersville, Tennessee and one at Stapleton's Super Market in Rogersville, Tennessee respectively. The remaining counts five through eighteen, charged that appellant's codefendants had, also on July 2, 1962, passed fourteen counterfeit $50.00 bills at various places, six in Rogersville and eight in Greeneville, Tennessee. Appellant's codefendants entered pleas of guilty to the offenses charged. The entry of such pleas was not before the jury in the trial of appellant but, by stipulation, the government and appellant's counsel did advise the jury that said codefendants had passed the counterfeit bills at the times and places set forth in the indictment. This stipulation includes the statement that appellant "does not admit that he knew at the time that Marion Eugene McClure and Ralph Randy Releford possessed or passed the said fifty dollar counterfeit notes." Defendant did not testify and rested his case at the conclusion of the government's proofs.

The jury disagreed as to the conspiracy count but found appellant guilty of the substantive offenses charged in counts two, three and four. Concurrent sentences of eight years imprisonment were imposed under counts two and three and five years probation ordered under count four.

This appeal charges that there was not sufficient evidence to support the jury's finding of guilt and that the District Judge erred in the instructions given and in failing to give an instruction requested by defendant-appellant.

### 1. Sufficiency of Evidence.

It is familiar law that in testing the propriety of setting aside a jury's verdict of guilty on grounds of insufficient evidence we appraise the government's evidence and the

legitimate inferences therefrom in the light most favorable to the prosecution. **Glasser v. United States**, 315 U. S. 80, 86 L. Ed. 680 (1942); **United States v. Decker**, 304 F. (2) 702, 705 (C. A. 6, 1962). There was abundant evidence to support the jury's verdict.

July 2, 1962 was a day of much commerce in fifty-dollar counterfeit bills in the cities of Kingsport, Rogersville and Greeneville, Tennessee. Some seventeen successful transactions were accomplished on that day in the area described. Each of the notes bore the same serial number —a circumstance peculiar to counterfeit bills. Defendant was positively identified as the person that cashed such notes at Latimer Looney Chevrolet Company, in Kingsport and at Joe's Food Market, in Rogersville. The identification of defendant as the man who passed one of the notes at Stapleton's Super Market, in Rogersville was less positive. Mary Stapleton, wife of the proprietor of Stapleton's, expressed her guarded belief that defendant, sitting in the court room, was the man who had given her a counterfeit fifty-dollar note to pay for a purchase of less than one dollar. She gave him the required change. Officers had shown her a picture of defendant and she agreed with them that he was the man she had dealt with. On cross-examination she agreed that she would not "say for sure that's him." On redirect she said "It looks like him * * * it certainly looks like him."

Although appellant did not testify, there was evidence that in an interview with Federal officers he had admitted passing three fifty-dollar notes one at Latimer Looney, one at Joe's Food Market and one at a place he was unable to recall. He stated that he had obtained the three notes from one Cecil Price at Danville, Virginia as part of a total payment of $200.00 for four cases of whiskey. Investigation at Danville, Virginia, failed to locate such a person as Cecil Price described by appellant as a boot-

legger. The record does not disclose whether the involved whiskey was moonshine or some special brand commanding such a substantial price. When the officers arrived at defendant's home to interview him he greeted them by saying that he had been expecting them. Defendant's mother, called by the government, testified that in the afternoon of July 2, she came home to find defendant sitting on her porch, and that while he was visiting with her, his codefendants arrived and shortly thereafter the three of them left in what could be inferred to be defendant's 1960 air conditioned Cadillac. In his interview with the government agents defendant said he did not know that the notes were counterfeit.

Appellant's charge of insufficient evidence rests primarily upon the wavering identification by Mrs. Stapleton and the lack of direct proof that defendant knew that the bills were counterfeit. We believe that the guarded identification of Mrs. Stapleton together with the balance of the government's proofs made a case for the jury in this regard. **Butler v. U. S.**, 317 F. (2) 249 (C. A. 8, 1963); **Walker v. U. S.**, 254 F. (2) 509 (C. A. 6, 1958). We likewise are of the opinion that the evidence was sufficient to support a finding of defendant's knowledge that he was dealing in counterfeit money. While proof of the passing of such notes does not by itself give rise to an inference of guilty knowledge, **Price v. U. S.**, 70 F. (2) 467, 468 (C. A. 4, 1934); **United States v. Litberg**, 175 F. (2) 20 (C. A. 7, 1949), and guilty knowledge is an essential element of the charged crime, **United States v. Carll**, 105 U. S. 611, 26 L. Ed. 1135, 1136 (1882); **Zattarelli v. U. S.**, 20 F. (2) 795, 798 (C. A. 6, 1927), **cert. den.** 275 U. S. 571, and must be proved beyond a reasonable doubt, **Gallagher v. United States**, 144 Fed. 87 (C. A. 1, 1906); **United States v. Ruffino**, 67 F. (2) 440, 441 (C. A. 2, 1933), we believe that the cumulative effect of the proven acts and the surrounding circumstances was sufficient to permit the jury to find be-

yond a reasonable doubt the required knowledge. Such view is supported by this court's opinion in **Marson v. United States**, 203 F. (2) 904, 906, 907 (C. A. 6, 1953). Of particular cogency on this point is the evidence that defendant disposed of the three fifty-dollar notes with striking dispatch, employing them seriatim to pay for three separate purchases apparently totaling less than $25.00.

**2. Refusal of Requested Instruction.**

The District Judge refused to give the following instruction requested by appellant:

> "I further charge you that you cannot infer that the defendant knew that the bills were counterfeit, solely from the fact that he passed them, if you find that he did pass them."

We find no fault with the request as an abstract and relevant statement of applicable law. **Marson v. U. S.**, 203 F. (2) 904, 906 (C. A. 6, 1953); **U. S. v. Berkley**, 288 F. (2) 713, 717 (C. A. 6, 1961), **cert. den.** 368 U. S. 822, 7 L. Ed. 2d 27. But we must test the refusal in the light of what the court did charge on the question of guilty knowledge. The District Judge told the jury:

> "Knowledge of or belief by the defendant Mr. Releford of the counterfeit character of any notes he may have passed is an essential element in this crime, and it must have been proved that Mr. Releford had such knowledge, or held such belief along with proof of all other essentials of these crimes, convincing you of the defendant's guilt beyond a reasonable doubt, before you can convict Mr. Releford.
>
> "Note further that intent to defraud is also one of the essential elements of the offenses charged under this section of the Code. However, the evidence need not show that the United States or anyone was actually defrauded, but only that the accused acted with the

intent to defraud. To act with intent to defraud means to act with specific intent to deceive or cheat, for the purpose of either causing some financial loss to another, or bringing about some financial gain to oneself."

And he further included as an essential of the government's proof

> "that the person passing such counterfeit or spurious note knew that it was not genuine"

and that

> "the burden is on the prosecution to have proved beyond all reasonable doubt each and every essential element of the crime charged in each count of the indictment."

The foregoing was charged after the trial judge had earlier said:

> "as regards serious crimes, as are charged in this case, specific intent must be proved before there can be a conviction. As the term itself suggests, specific intent requires more than a mere general intent to do something. A person who knowingly does an act which the law forbids, intending with evil motive or bad purpose either to disobey or to disregard the law, may be found by you to have acted with specific intent. An act is done knowingly if it is done voluntarily and purposely, and not because of some mistake or inadvertence or other innocent reason."

We believe that from such instructions the jury would clearly understand that proof of the passing of the counterfeit bills would not by itself permit a finding of the requisite guilty knowledge. We should not be overquick to brush aside as harmless error the failure to give a correct statement of relevant law but in the light of what the court did charge in this case we are constrained to

hold that no "substantial rights" of defendant were affected by refusal of the requested instruction. Fed. R. Crim. P. 52A.

### 3. Instruction on Intent.

The court charged the jury as follows:

> "It is reasonable to infer that a person ordinarily intends the natural and probable consequences of acts which he knowingly does or knowingly omits to do. So, unless the contrary appears to you from the evidence, you may draw the inference that Mr. Releford intended all the consequences which one standing in like circumstances and possessing like knowledge should reasonably have expected to result from any act which he knowingly did or knowingly omitted."

Relying on the Fifth Circuit's decision in **Mann v. U. S.**, 319 F. (2) 404, 407 (1963) that such an instruction was erroneous, appellant here charges error in the giving of it. We have had occasion to characterize the language of the involved instruction as clumsy and inartistic but in **U. S. v. Denton**, 336 F. (2) 785, 788 (C. A. 6, 1964) where the proof of guilt was strong as it is here, we held that the use of it was not reversible error. Speaking for this court Judge Edwards there said:

> "This instruction has been recently and vigorously criticized by the Fifth Circuit, **Mann v. United States**, 319 F. 2d 404 (C. A. 5, 1963), cert. denied 375 U. S. 986, 84 S. Ct. 520, 11 L. Ed. 2d 474 (1964). It has also been held more recently by the Ninth Circuit not to constitute prejudicial error under the whole instruction on intent therein given. **Sherwin v. United States**, 320 F. 2d 137 (C. A. 9, 1963), cert. denied 375 U. S. 964, 84 S. Ct. 481, 11 L. Ed. 2d 420, rehearing denied 376 U. S. 946, 84 S. Ct. 796, 11 L. Ed. 2d 771 (1964). We feel that the second sentence of the in-

struction quoted above is at best clumsy and, if taken alone, confusing. On this record, however, and under a total instruction on intent very similar to that in the **Sherwin** case, we do not think the error affected any 'substantial right' of defendant." 336 F. (2) 788.

We consider that such observations are appropriate and controlling here.

**4. Instruction on Reasonable Doubt.**

Included in the court's charge was the following:

> "But proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act on in the most important of your own affairs, • • •."

The quoted language is plucked from its context before being accused. It must be returned to that context to test whether it wronged the defendant. **Cobb v. Union Railway Company,** 318 F. (2) 33, 37 (C. A. 6, 1963). It is but part of a sentence that concludes "but no defendant is ever to be convicted on mere suspicion or speculation or conjecture." In addition to the balance of its own sentence the accused language is part of a charge which contains long approved definitions of reasonable doubt. We are aware that the District of Columbia circuit has recently condemned language substantially like that challenged here. **Scurry v. United States,** 347 F. (2) 468 (C. A. D. C. 1965) and its earlier opinion of **Jones v. U. S.,** 338 F. (2) 553, 555 (C. A. D. C. 1964). But see **Hopt v. People of Utah,** 120 U. S. 430, 439-441, 30 L. Ed. 708, 711 (1887); **Hooper v. United States,** 216 F. (2) 684, 689 (C. A. 9, 1954).

We prefer however to conclude this subject by relying on the United States Supreme Court decision in **Holland**

**v. United States**, 348 U. S. 121, 99 L. Ed. 150 (1954). The condemned language there under consideration had defined a reasonable doubt as "the kind of doubt * * * which you folks in the more serious and important affairs of your own lives **might** be willing to act upon."[2] The Supreme Court refused to find reversible error and concluded as follows:

> "But we believe that the instruction as given was not of the type that could mislead the jury into finding no reasonable doubt when in fact there was some. A definition of a doubt as something the jury would act upon would seem to create confusion rather than misapprehension. 'Attempts to explain the term "reasonable doubt" do not usually result in making it any clearer to the minds of the jury.' **Miles v. United States**, 103 U. S. 304, 312, 26 L. Ed. 481, 484, and we feel that, taken as a whole, the instructions correctly conveyed the concept of reasonable doubt to the jury."

Appellant seeks to distinguish **Holland** by emphasizing that the instruction before us uses "would" instead of the "might" which in **Holland** preceded the words "be willing to act upon." Such nuance is without substance.

Judgment affirmed.

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[2] While the Supreme Court in **Holland** did cast some doubt on the propriety of such a charge by stating, "We think that this section of the charge should have been in terms of the kind of doubt that would make a person hesitate to act * * * rather than the kind on which he would be willing to act." id. p. 138, the Court did uphold the charge as given since the instructions "taken as a whole" were not prejudicial. Unlike the cases of **Scurry v. United States**, and **Jones v. United States** (*supra*), the instant case, as the **Holland** case, deals with instructions which cannot be considered prejudicial when read in their entirety.

# In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 780

JAMES LAWRENCE RELEFORD, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT*

## BRIEF FOR THE UNITED STATES IN OPPOSITION

### OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 352 F. 2d 36.

### JURISDICTION

The judgment of the court of appeals was entered on November 2, 1965. The petition for a writ of certiorari was filed on November 27, 1965. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

### QUESTION PRESENTED

Whether the instructions to the jury were erroneous.



797-823—65

STATEMENT

After a trial by jury in the United States District Court for the Eastern District of Tennessee, petitioner was convicted of passing three counterfeit $50 bills in separate transactions on July 2, 1962, in violation of 18 U.S.C. 472.[1] He was sentenced to concurrent terms of imprisonment of eight years for two of the offenses and to five years' probation for the remaining offense. On appeal, the conviction was affirmed.

The evidence shows that petitioner was positively identified by witnesses as the man who on July 2, 1962 gave a $50 counterfeit bill (receiving change in return) to the cashier of an automobile company in payment of a $15 repair service to a Cadillac (R. 33a–43a). Petitioner was also positively identified as the man who on the same day gave a $50 counterfeit bill to a food market operator in payment for a purchase of meat. A few days later when the market owner located petitioner to complain of the bogus bill (after the Secret Service had entered the case), petitioner returned the full amount tendered to the owner with the explanation that he had received the counterfeit bill in a business transaction. He never requested the return of the counterfeit bill (R. 46a–50a). In addition the wife of a supermarket owner testified that petitioner "certainly looks like" the man who gave her a $50 counterfeit bill (also on July 2)

[1] Two co-defendants charged in other counts of the indictment with passing some 14 of the counterfeit $50 bills on the same day entered pleas of guilty prior to trial.

At petitioner's trial the jury was unable to agree as to a conspiracy count charged (R. 154a).

in exchange for an item costing less than a dollar (R. 59a–65a).

There was also testimony that petitioner had voluntarily admitted to federal agents, after having been fully advised of his rights (including the right to counsel) that he had passed three of the counterfeit bills although he denied knowing that they were counterfeit. He said that he had received the bills in return for four cases of liquor delivered to an alleged acquaintance whom officers, after investigation, were unable to identify or locate (R. 65a–83a).

## ARGUMENT

Petitioner's contentions relate to the trial court's instructions which were upheld, after careful consideration, by the court below. There is no occasion for further review.

1. The trial court's charge with respect to the question of guilty knowledge, set out in some detail in the opinion of the court below, disposes of petitioner's contention that his conviction must be reversed because the court refused to specifically instruct that "you cannot infer that the defendant knew that the bills were counterfeit, solely from the fact that he passed them, if you find that he did pass them".[2] The charge given informed the jury that knowledge by petitioner of the counterfeit character of any notes he may have passed was an essential element of the crime; that it could convict only upon proof of such

[2] With respect to this requested instruction, the record shows that the district judge considered it as "Modified and Charged" in combination with a request bearing on knowledge of the counterfeit character of the bills (R. 159a).

knowledge and other essential elements convincing it of guilt beyond a reasonable doubt; and that the government had the burden of proving beyond a reasonable doubt that petitioner knew the notes were not genuine (see R. 132a–135a). The jury was also told that an essential element was intent to defraud (R. 133a, 135a). It was also admonished that it had to find specific intent—the knowing performance of a forbidden act intending with evil motive or bad purpose to disobey or disregard the law (R. 119a–120a). The jury could not have failed to understand that proof of the passing of the bills alone would not permit conviction.

2. In view of the detailed instructions on intent, there is no merit to the claim of error in the instruction that "unless the contrary appears * * * from the evidence" the jury could draw an inference that petitioner intended the natural and probable consequences of his acts "which one standing in like circumstances and possessing like knowledge should reasonably have expected to result * * *" (R. 121a). See *United States* v. *Denton*, 336 F. 2d 785 (C.A. 6); *Sherwin* v. *United States*, 320 F. 2d 137 (C.A. 9), certiorari denied, 375 U.S. 964. In *Mann* v. *United States*, 319 F. 2d 404 (C.A. 5), certiorari denied, 375 U.S. 986, the Fifth Circuit held that, on the facts of the income tax evasion case there involved, the "overall effect" of the instruction was "to place a burden upon the defendant to produce evidence to overcome a presumption of guilt" (319 F. 2d at 410). This Court has had opportunity in the past to resolve the supposed conflict (see *Sherwin* v. *United States*, *supra*); and

the Fifth Circuit has more recently held that in a different factual context the same instruction did not constitute plain error (*Helms* v. *United States*, 340 F. 2d 15).

3. The court's statement that "proof beyond a reasonable doubt is established if the evidence is such as you would be willing to rely and act on in the most important of your own affairs"—is but a part of a charge giving long approved definitions of reasonable doubt[3] (see R. 110a–111a). In *Holland* v. *United States*, 348 U.S. 121, this Court, considering similar language, suggested that the instruction should have been in terms of the kind of doubt that would make a person hesitant to act rather than willing to act, but concluded that the charge as given would not mislead the jury into finding no reasonable doubt when in fact there was some. As in that case, the instructions here, viewed as a whole, correctly conveyed the concept of reasonable doubt.

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[3] This part of the charge was followed, *inter alia*, by a statement that "A reasonable doubt does exist when, after a careful and impartial consideration of all the evidence, you do not feel convinced to a moral certainty that a defendant is guilty of the charge."

## CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

THURGOOD MARSHALL,
*Solicitor General.*
FRED M. VINSON, JR.,
*Assistant Attorney General.*
BEATRICE ROSENBERG,
JULIA P. COOPER,
*Attorneys.*

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